

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1861 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

AHMADHUSAIN RASULBAX

Versus

AHMEDABAD MUNICIPAL CORP. OF CITY OF AHMEDABAD

Appearance:

MR AS VAKIL for Petitioners
MR AMIT M PANCHAL for Respondent No. 1
MR MB GANDHI for Respondent No. 2

CORAM : MR.JUSTICE S.K.KESHOTE
Date of decision: 07/02/2000

ORAL JUDGEMENT

#. Rule. Mr.Panchal and Mr.Gandhi waive service of Rule on behalf of Respondents. Heard the learned counsel or the parties and perused the impugned order.

#. It is not in dispute that the respondent No.2 has filed a suit being Civil Suit No.4709 of 1999 before the City Civil Court at Ahmedabad in which prayer has been made as under:

- (a) That the defendants and/or their servants, agents, men, etc. be restrained by an order of permanent injunction from putting up any construction or creating any easement rights over the common wall between the property bearing survey nos.4358 and 4360 situated in the Ward Shahpur-II, Ahmedabad boundaries are described in detail in the Schedule attached herewith.
- (b) The defendants be directed and ordered to repair the common wall between survey nos.4358 and 4360 right from the foundation at their risk and cost and within a time limit.
- (c) The defendants be directed and ordered to remove the gallery and other structures illegally put up on the said property without permission of the Municipal Corporation and causing obstructions in the peaceful enjoyment of the property of the plaintiff and other neighbours.

#. In view of this prayer, which is not in dispute, and the court has also noticed, the defendant No.2 is certainly a proper party to the Civil Suit No.3905 of 1999. The learned trial court is correct in its approach to implead it as party-defendant No.2 in the suit aforesaid. The learned trial court has not committed any material irregularity in exercise of its jurisdiction in making of this order which calls for interference of this court under Section 115 of the Civil Procedure Code, 1908. Presence of the respondent No.2 in suit will possibly avoid any conflicting judgments in the matter. The learned counsel for the petitioner, in support of his arguments, relied upon decision of the Rajasthan High Court in the case of Girdhari Lal v. Nagar Parishad & Anr. reported in AIR 1988 RAJASTHAN 128. This decision is of no relevance in this matter. Each case has to be decided on its own facts. Otherwise also, in case this order is allowed to stand, it will not occasion any failure of justice or cause irreparable injury to the petitioner as the suit has already been filed by other side against him in the matter. However, in case either of the party applies to the court concerned, the suits may be consolidated and be tried together. The revision application is dismissed. Rule discharged. No order as

to costs.

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(sunil)